

REMARKS

Claims 21-41 are pending in the application, with claims 31-41 withdrawn from consideration by the Examiner as being directed to a non-elected invention. Claims 21-30 have been rejected.

In the Office Action mailed November 3, 2006, the Examiner rejected claims 21-30 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0253490A1 to Wulff et al. ("the Wulff application") in view of U.S. Pat. No. 6,818,146 to Eaton et al. In addition, claims 21-30 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2006/0049167 A1 to Yang et al. ("the Yang application"). Applicant respectfully traverses both rejections.

Neither the Wulff application or Yang application is prior art to the present application. The Wulff application is a national stage application of International PCT Application No. PCT/EP03/00356, filed January 15, 2003. The present application was filed on March 12, 2004, and claims priority to a Japanese patent application filed March 13, 2003. The Wulff application was published on December 16, 2004, nine months after the filing of the present application. As such, the Wulff application does not constitute prior art under 35 U.S.C. 102(b). Furthermore, the international PCT application of Wulff, a copy of which is attached to this Response as Exhibit A, was published on July 24, 2003, less than one year prior to the filing of the present

application. Therefore, the Wulff international PCT application cannot constitute prior art to the present application under 35 U.S.C. 102(b). Nor does the Wulff international PCT application constitute prior art under 35 U.S.C. 102(a), because it was published **after** the invention thereof by applicant as is evidenced by Applicant's priority Japanese application filed on March 13, 2003.

With regard to 35 U.S.C. 102(e), a published international application filed by another before the invention by applicant constitutes prior art only if the international application designated the United States and was published in the English language. The Wulff international PCT application was not published in English, but rather in German. As such, the effective filing date of the Wulff application for purposes of determining prior art under 35 U.S.C. 102(e) is not the January 15, 2003 filing date of the international PCT application, but rather the filing date of the national stage application in the United States, which the U.S. Patent and Trademark Office public PAIR system shows to be June 22, 2004— more than three months after the filing of the present application. Accordingly, the Wulff application does not constitute prior art to the present application, and the rejection of claims 21-30 based on the Wulff application must be withdrawn.

The Yang application does not constitute prior art to the present application either. The Yang application was published on March 9, 2006, nearly two years after the filing of the present application, and therefore does not constitute prior art under 35 U.S.C. 102(b). Furthermore, the Yang application claims priority to a provisional

application filed on September 8, 2004, which is more than five months after the filing of the present application. As such, the Yang application cannot constitute prior art under 35 U.S.C. 102(a) or 102(e). Accordingly, the rejection of claims 21-30 based on the Yang application must be withdrawn.

Applicant respectfully traverses the election/restriction resulting in the withdrawal of claims 31-41. The combination claimed in claims 31-41 does require the elements of the subcombination for patentability, and the subcombination is patentable over the cited references as explained above. Accordingly, Applicant respectfully requests that the election/restriction requirement be withdrawn, and claims 31-41 reinstated.

For the reasons stated above, Applicant submits that the application is in a condition for allowance. Therefore, Applicant respectfully requests that a timely notice of allowance be issued in this case. If there are any fees due in connection with this matter, please charge Applicant's Deposit Account No. 01-0265.

Respectfully submitted,

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